



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Nova-CPF, Inc.

File: B-261677

Date: October 18, 1995

Joel S. Rubinstein, Esq., Bell, Boyd & Lloyd, for the protester.
Ann L. Giddings, Esq., and Diane D. Hayden, Esq., for the agency.
C. Douglas McArthur, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Despite protester's general assertion that it intends to perform in accordance with specifications, agency may reasonably reject low bid as mistaken where bid was significantly lower than the other responsive bids and the government estimate, and it appears that bid omitted costs of welding pipe, based on bidder's erroneous interpretation of specifications as not requiring welding.

DECISION

Nova-CPF, Inc. protests the rejection as mistaken of its bid under invitation for bids (IFB) No. N62477-93-B-0029, issued by the Naval Facilities Engineering Command, for replacement of a condensate return system at the Marine Corps Combat Development Command in Quantico, Virginia. Nova contends that the agency should have accepted a verification of Nova's bid as submitted without further explanation.

We deny the protest.

On March 27, 1995, the agency issued the solicitation for a fixed-price contract to install new underground and aboveground piping and incidental related work. The statement of work consisted of two divisions—general requirements and site work. The specifications for site work included those for demolition, asbestos control, and excavation, as well as Federal guide specification 02694 for exterior underground heat distribution systems (UHDS). Paragraph 2.2 of the guide specification, Fittings, contained welding requirements; paragraph 3.2, Piping, specified the type of welding for various sizes of pipe.

Nova submitted the lowest of five bids received on April 26. Nova's price of \$1,371,069 was so much lower than the government estimate of \$2,751,000 and the other bids received that, on April 27, the Navy sent Nova a letter asking the protester to review its worksheets for errors or omissions.

Nova responded by letter of April 28, confirming its price. The contracting officer initiated an analysis and comparison of Nova's bid with the government estimate. Analysts obtained explanations from Nova and found that most of the discrepancy between Nova's bid and the government estimate resulted from Nova's proposed use of a non-welded, push together system. Nova also proposed use of polyvinyl chloride plastic for the outer conduit, instead of cathodic protection as assumed by government estimators. In addition, the analysts found that as compared with the government estimate, Nova appeared to have omitted much of the cost of demolition of fiberglass-reinforced pipe and trenching, as well as costs of sediment control, traffic control, and removal of concrete pipe encasements.

The contracting officer held a pre-award meeting with Nova on May 8. At that meeting, Nova raised the issue of whether the proposed push together system complied with the solicitation's welding requirements.¹ Nova and the agency disagreed as to whether the specification required welding.

By letter dated May 18, the contracting officer sought verification from Nova that its bid was correct and met the requirements for a welded system. Nova's response, by letter of May 24, confirmed its price, stating that "said bid expressly conforms to the exact letter of the plans and specifications." In the letter, however, Nova took express exception to the agency's position regarding the welding requirement. On May 26, after speaking with the contracting officer by telephone, Nova provided a third letter confirming its bid, stating that "all fittings are welded and restrained as per the details and notes on the drawings." In fact, the drawings contained no reference to welding requirements. After consideration of Nova's submissions, the contracting officer advised Nova by letter of June 8 that she was rejecting the bid as clearly in error. This protest followed.

The protester contends that the agency is required to consider even a mistaken bid for award if the bidder verifies the bid. The protester asserts that it has made no allegation of mistake and that it believes its bid to be totally responsive to the solicitation. Nova contends that the Navy has satisfied its duty to bring its suspicions of a mistake to the attention of Nova. Nova asserts that an award to Nova would not be unconscionable and would obligate Nova to perform all of the work required by the contract.

¹The analysts' report was not completed until May 10, but Nova was already aware of some of the analysts' conclusions.

Nova is incorrect in its argument that a bidder's verification of its price, without the submission of any supporting evidence, precludes an agency from rejecting a bid otherwise responsive on its face. Where it is clear that a mistake has been made, the bid cannot be accepted, even if the bidder verifies the bid price, where acceptance of a clearly erroneous bid would otherwise be unfair to other bidders. Atlantic Servs., Inc., B-245763, Jan. 30, 1992, 92-1 CPD ¶ 125.

Federal Acquisition Regulation (FAR) § 14.407-1 (FAC 90-29) requires a contracting officer to examine all bids for mistakes. A significant disparity between the low bid and the other bids received or the government estimate is sufficient to place a contracting officer on notice of a possible mistake and to create a duty to request a bid verification. TLC Fin. Group, B-237384, Jan 26, 1990, 90-1 CPD ¶ 116. The contracting officer is obligated to identify the basis for his suspicions, whether it is the spread between the low bid and the other bids received or the government estimate, important or unusual characteristics of the specifications, or any other information leading him or her to believe that there is a mistake in the bid. FAR § 14.407-3(g).

Where the bidder fails or refuses to furnish evidence in support of its bid, the contracting officer may make a determination to reject the bid where (i) the amount of the bid is so far out of line with the amounts of other bids received, or with the amount estimated by the agency or determined by the contracting officer to be reasonable, or (ii) there are other indications of error so clear as to reasonably justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders. FAR § 14.407-3(g)(5); R.P. Richards Constr. Co., B-260543, June 21, 1995, 95-1 CPD ¶ 280. A contracting officer's decision to reject an apparently mistaken bid under the authority of FAR § 14.407-3(g)(5) is subject to question only where it is shown to be unreasonable. Pamfilis Painting, Inc., B-237968, Apr. 3, 1990, 90-1 CPD ¶ 355. The record here supports the reasonableness of the contracting officer's decision to reject Nova's bid.

The source of suspected error in Nova's bid is the protester's disagreement with the agency as to whether the solicitation requires welding of pipe. A bidder's misinterpretation of solicitation requirements may provide a basis for the contracting officer to reject the bid as clearly erroneous. Innovative Refrigeration Concepts, B-242515, Mar. 27, 1991, 91-1 CPD ¶ 332. Based upon our review of the record here, we conclude that Nova's interpretation of the specifications is unreasonable.

Nova argues that under paragraphs 1.3 and 2.5 of guide specification 02694, the contractor's obligation is to "design and provide [a] new and modify [an] existing exterior buried factory-prefabricated preinsulated condensate piping" system. Nova contends that the relevant requirement from paragraph 2.5 is for a contractor to design a system "for which a Federal Agency Approved Brochure has been issued

for Class B ground water conditions." Nova's bid is based upon a non-welded push together, Heat-Tite steel piping system, manufactured by Thermal Piping Systems, Inc. (TPS). TPS obtained approval for its brochure shortly after bid opening.² Nova contends that the decision how to join pipe is the designer's and that Nova's design will comply with the TPS brochure, which allows non-welded joints.³

The "systems approach" upon which Nova's arguments rely is a common method for procurement of UHDS, allowing the government to conduct competitive procurements of what are generally proprietary pre-engineered systems. See Moore Heating & Plumbing, Inc., B-254024, Nov. 16, 1993, 93-2 CPD ¶ 276. The Federal Agency UHDS Committee administers the prequalification procedure, issuing letters of acceptability to suppliers whose systems satisfy the prequalification criteria. These letters of acceptability entitle the supplier to furnish its system on projects undertaken by the participating agencies, of which the Navy is one. See Moore Heating & Plumbing, Inc., B-247417, June 2, 1992, 92-1 CPD ¶ 483. The prequalification procedure ensures that a system submitted for approval will resist the various causes of deterioration. Once the Committee qualifies the system, the specifications are incorporated into the supplier's brochure, which becomes the UHDS design specification for any project where that supplier is selected. Id.

²Although the agency and Nova dispute the date upon which approval was granted, the Navy does not argue that approval was a matter of bid responsiveness, and the issue appears irrelevant to the resolution of this protest. The brochure provided by Nova notes approval for use with guide specification 02695, for aboveground systems, but clearly states that the design is for an underground system.

³This argument appears untimely, in that Nova's initial protest to our Office contained no indication of disagreement over the specifications. That Nova was aware of the issue is clear from the contracting officer's May 18 letter, which addresses Nova's contention that paragraph 2.5 of the guide specification obligates the contractor to design the system in accordance with an approved brochure. Such an argument appears to present a wholly separate and independent basis of protest from Nova's initial assertion that verification of the bid precludes its rejection as mistaken, and, as such, must independently satisfy the timeliness requirements of our Bid Protest Regulations, see Westinghouse Elec. Corp., B-250486, Feb. 4, 1993, 93-1 CPD ¶ 229, which require such allegations to be raised within 10 working days after the protester knew or should have known the basis for protest. See 4 C.F.R. § 21.2(a)(2) (1995). Since Nova did not raise with our Office any issue of disagreement with the welding requirement until its comments on the report submitted by the agency in response to the protest, the issue is untimely.

We therefore agree with the protester that the solicitation granted a contractor considerable discretion in designing the system, within the bounds of the approved brochure. We disagree, however, that this discretion overrides specific requirements such as the one here for welding. While the agency grants a contractor overall design responsibility for UHDS, the option of determining the general layout and essential characteristics of the system is reserved to the agency. Moore Heating & Plumbing, Inc., B-254024, supra. Paragraph 2.5 of guide specification 02694 clearly states that the specifications will govern where there is a conflict between the brochure and the project specification.

Where, as here, a dispute exists as to the meaning of a solicitation provision, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions. Aerojet Ordnance Co., B-235178, July 19, 1989, 89-2 CPD ¶ 62. Nova's interpretation would require our Office to ignore the welding requirements of paragraph 3.2 of guide specification 02694. Specifically, paragraph 3.2.1, Fittings and End Connections, states as follows:

". . . For [pipe] sizes 1 to 2 inches provide threaded or socket-welding or butt welding fittings and end connections For sizes 2.5 inches and larger provide butt welding fittings and end connections . . ."

Although Nova initially denied that the statement of work required welding, the protester now concedes that it does--although Nova contends that the requirements for socket-welding and butt welding at paragraph 3.2.1 apply only to connections within manholes and buildings. Nova provides no basis for its suggested interpretation, however, and given the broad language of paragraph 3.2.1, which does not limit the requirements for welding as Nova suggests, we see no basis to find unreasonable the Navy's interpretation of the specification as requiring welding.

We have no basis to conclude that Nova's interpretation of the guide specification--that approval of the TPS brochure rendered the welding requirements meaningless--is reasonable. Under such circumstances, and in view of Nova's explanations and the difference between Nova's bid and other bids received, the protester has failed to show that the contracting officer's decision to reject Nova's bid was unreasonable.

The protest is denied.

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